

July 23, 2009

Mr. Kirkpatrick called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Bischoff, Mr. Walchuk (7:10 p.m.) Absent for Roll Call,
Mr. Taibi, Mr. Ryland, Mr. Nace, Mr. Ford, Mr. Kirkpatrick

Members Absent: Mrs. Dziubek, Mrs. Corcoran, Mr. Badenhause

Others Present: Atty. Mark Anderson, Carl Hintz, Kevin Smith, Atty. J. Peter Jost, Rick Roseberry, Rick Steffey, Michele McBride, Earl Steeves, Pat Lingelbach, William Happel, Louie Pingatorie, Alan La Costa, Gary Marsh
Atty. James Knox, Atty. Scott Carlson, Atty. Salvatore DiFazio, Paul Sterbenz, Father Peter Suhaka, Marla Roller,
Atty. Lloyd Tubman, William Smith, Robert and Jennifer Belickjian
Robert Podera, Robin Brand, Paige DiRoberto

Approval of Minutes: Mr. Ford made a motion to approve the minutes, with minor changes. Mr. Ryland seconded the motion.

Vote: Ayes: Mr. Ford, Mr. Ryland, Mr. Taibi, Mr. Nace, Mr. Kirkpatrick

Abstain: Mr. Bischoff

Township of Union/Douglass: Block 29, Lot 13, Pittstown and Perryville Roads:

Public Hearing: Committeeman Bischoff asked that the record reflect he was recusing himself. Atty. Peter Jost was present on behalf of the Township of Union. Engineer Smith recommended the application be deemed complete in order that the Board could proceed with the Hearing. Mr. Ford made the motion to deem the application complete. Mr. Ryland seconded the motion.

Vote: Ayes: Mr. Ford, Mr. Ryland, Mr. Taibi, Mr. Nace, Mr. Kirkpatrick

Public Hearing: Atty. Anderson had reviewed notices and found them to be complete, giving the Board jurisdiction to hear the matter. Mr. Anderson noted that this was a use variance, five affirmative votes are required, and only five members were present. Atty. Jost said they would proceed. Witnesses sworn by Atty. Anderson were Earl Steeves, Vice President of Max Spann Auction Company; Rick Steffey, Hunterdon County Planning and Agricultural Development Boards; Michele McBride, Vice Chair, Union Township Environmental Commission; Rob Haynes, Township Committeeman and Rick Roseberry, Maser Consulting, testifying as a Professional Planner.

Atty. Jost asked Committeeman Haynes to provide testimony. Mr. Haynes said he was on the Committee in 2000 when the Township purchased the Douglass property. Atty. Jost presented a copy of the Contract of Sale, dated June 7, 2000. It was marked Exhibit A-1. At this time, Board member Orest Walchuk arrived (7:10 p.m.). The Deed between the Township of Union and the Douglass family was marked Exhibit A-2. Atty. Jost repeated his earlier question to Mr. Haynes about membership on the Committee. Mr. Haynes responded.

Mr. Haynes recited from the Contract that buyer acknowledged seller had received other offers; however, seller chose to sell the property to the Township because it was their intention to preserve the property as a working farm and in the event that became impractical or impossible, the Township would utilize the property as other open space, such as parkland. Mr. Haynes stated that incidents occurred with the sale of the Barrett Farm, Block 25, Lot 35. That Farm had been purchased by the State and auctioned off to a purchaser who turned the property into what could be described as an industrial farm. Mr. Haynes also said there have been problems with a preserved farm in Franklin Township where numerous greenhouses have been erected. Union Township did not want to see either of these things happen with the Douglass property, therefore they held onto the property. Mr. Kirkpatrick understood the Township would like the property to be preserved as a working farm. The Township Committee has decided it is time to sell the property. The firm of Max Spann has been hired to auction the property. A deed is being prepared to convey a deed of easement from the Township to itself in order to accomplish the preservation of the property. Atty. Jost asked for questions from the Board. There were none.

Atty. Jost asked Rick Roseberry to provide testimony. Mr. Roseberry presented his credentials. The credentials were accepted by the Board. Mr. Roseberry described the Douglass property. He referenced the Exhibit that was provided with the application. It showed an approximate thirty-acre flexible area that the Township thought would be most appropriate for a dwelling. Two acres of that area would be allotted for the home site. There is an equestrian trail easement along the northern part of the property and that will be incorporated in the deed. The property has woods and cultivated fields. There is an existing tenant house and other buildings on the farm.

Applicant is requesting a use variance to allow for a second dwelling on the property. Mr. Roseberry said applicant must show special reasons for the variance, as well as proving that they are not deviating from the intent of the Master Plan (MP) and the Land Use Ordinance. Applicant must show negative criteria. Mr. Roseberry cited the MLUL, which references appropriate use of the land in a manner that will promote health, safety, morals and general welfare. Mr. Roseberry believes that preservation of the property as a working farm satisfies the intent of the MP and the Zoning Ordinance. Mr. Roseberry stated that the MP is very heavily weighted toward preservation of agricultural properties. The MLUL also references providing light, air and open space. Mr. Roseberry said preservation of the property satisfies that requirement. Sufficient space and appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both private and public, according to the respective environmental requirements in order to meet the needs of all New Jersey Citizens are also required by the MLUL. Mr. Roseberry said the proposal before the Board intends to preserve the property, which is currently owned in the public sense and will now be transferred to a private individual with deed restrictions.

Stream buffers are being preserved along the Capoolong Creek, thus meeting the bulk requirements of the Zoning Ordinance. Promotion of conservation of historic sites, open space, energy and valuable natural resources in the State, prevention of urban sprawl and degradation of the environment and improper use of land are all MLUL requirements. Mr. Roseberry said this property is adjacent to the historic properties in Pittstown. He said a valuable natural resource on this property is the soil. The MP specifically identified prime agricultural soils and preservation of this property would enhance the goals of the MP. Mr. Roseberry referenced the MP goals. The first goal was to restrain important farmland soils from non-agricultural development; the second was to continue to provide for fair and reasonable use of larger tracts of actively farmed property and third to recognize the importance of the agricultural soils as an irreplaceable natural resource. Mr. Roseberry said the 2002 MP Reexamination Plan restricted growth and use generators such as sanitary sewers and roads by mandating development practices that result in preserving upwards of 80% of prime farmland. The proposal before the Board will preserve more than 80%. It has been Township Policy to allow innovative use standards so that a farm has a maximum opportunity to be economically viable. In return for deed restricting properties from future development, farmers should be provided a variety of alternative economic opportunities for their land, such as accessory entertainment, roadside stands, bed and breakfasts or other related businesses. Mr. Roseberry indicated the Policy should be retained.

Mr. Roseberry said the proposal would allow a buyer to build what would be considered the prime farmhouse. He said the house that exists on the property would probably not be suitable as a prime farmhouse, although it could be used as a residence for farm workers or be rented out to provide funds, ensuring that the property is actively farmed in the future.

Mr. Roseberry addressed the negative criteria. Would there be a detriment to the public good if strict compliance with the Ordinance is required and would the denial of the proposal have a negative effect on the intent and purpose of the Ordinance? Mr. Roseberry said there would be a substantial impact if the variance were not granted. The Township wants to keep the property as an active farm. If they are unsuccessful, they have the option to keep it for recreational use or open space. The prime agricultural soils would not be fully utilized unless the property is actively farmed. Mr. Roseberry referenced the contract, which stated that the Douglass family has the option to repurchase the property if the Township is unsuccessful in their preservation effort. He said there would then be the potential for residential development. The detriment would be loss of prime agricultural soils. Mr. Roseberry believes the negative criteria had been satisfied. He said granting the variance would allow the property to be sold as a working farm. Atty. Jost asked Mr. Roseberry about subdivision of the tenant house. Mr. Roseberry said that was an option; however, it would result in taking additional land from the subject property. Mr. Roseberry said he looked at the tenant house as an accessory use to the farm.

Atty. Jost indicated that if the tenant house was subdivided, the future farm owner would not have control over the use of that house. Atty. Jost said he had nothing further. Mr. Kirkpatrick asked for questions from the Board and Professionals. Mr. Hintz asked if the property was in the Planning area of the Highlands. Mr. Roseberry replied in the affirmative. Mr. Ford said the Plan showed Lot 12. He asked Mr. Roseberry to describe Lot 12. Mr. Roseberry said Lot 12 had been merged with Lot 13 when it was purchased by the Township. Mr. Ford asked if there were any wooded lands in the Exemption Area. Mr. Roseberry said "Yes" and explained the location. Atty. Jost asked if it would be a good idea for the Board to retain jurisdiction over the location of the residential dwelling to make sure there would be no detrimental impact on the soils. Mr. Roseberry indicated that would be appropriate. Atty. Jost said that could be a condition of approval.

Atty. Anderson asked if the location of the existing house was at the southerly end of the property. Mr. Roseberry said that was correct. He also mentioned there are other farm buildings on the site. Atty. Jost asked that the Exception Area Exhibit be marked. The Exhibit was marked A-3.

Atty. Jost asked Rick Steffey to come forward. Mr. Kirkpatrick asked him to provide credentials. Mr. Steffey said he is on the Staff of the Hunterdon County Planning Board (HCPB), as well as the Hunterdon County Agricultural Development Board. Mr. Steffey said he is familiar with farmland preservation programs. He manages one of the municipal Planning Incentive Programs and is familiar with easement language. Mr. Steffey has worked for HCPB for almost three years. He had been at the Douglass property today. He indicated the property is ideal for preservation. Mr. Steffey said it was not important from a County perspective whether the tenant house was subdivided or kept with the entire property. Atty. Jost asked if it would be desirable for the purchaser of the property to be on the site. Mr. Steffey said "Of course". He said Exception Areas are commonly seen on preserved farms. Mr. Steffey emphasized the importance of support for the infrastructure of the farm.

Mr. Kirkpatrick asked for questions from the Board and Professionals. Mr. Hintz noted that the existing farmhouse is in the Historic District and a new dwelling in that area would be detrimental to that District. Mr. Steffey said it could be unless there were guidelines for reconstruction. He said the County would prefer that access for another dwelling be off a Municipal Road. Atty. Jost said subdivision of the property would require HCPB approval because the existing house fronts on a County Road. Mr. Kirkpatrick said all Professionals would complete testimony. Members of the Public would, however, be able to ask questions of any Professionals.

Earl Steeves, Vice President of Max Spann Real Estate Auction Company, stated his experience. Mr. Steeves said from a marketing standpoint, it would be adverse for the existing farmhouse to be subdivided.

It would be detrimental to the value of the property. The original Douglass house had been subdivided a number of years ago. That house was typical of a house on a hundred-acre farm. Mr. Steeves felt the designated Exception Area would be ideal for construction of a residential dwelling. He thought the buyer should have some choice in the selection of the two-acre building area. Mr. Steeves did not feel it would be detrimental for the Board to have jurisdiction of the dwelling location.

Michele McBride, Vice-Chair, Union Township Environmental Commission and Chair of the Stewardship Committee came forward to provide testimony. She stated her involvement with the proposed sale of the subject property. Ms. McBride said the Stewardship Group has a final draft of the Deed of Easement. The Group will be meeting again to confirm that everything is fine with the Deed. The Deed will provide for one additional home site on the property. There are additional restrictions from what is typically included in a SADB Easement. The restrictions include a Floor Area Ratio of 1%, or 45,000 square feet, for farm and non-farm structures, both temporary and permanent; total impervious surface coverage would be 2.5% and a ten-foot wide riding trail on the northerly portion of the property. Ms. McBride said that trail exists and is used by the Pittstown Trail Association. Atty. Jost asked if UTEC would be amenable to a restriction prohibiting a new driveway off the County Road. Ms. McBride concurred with Atty. Jost about placement of the new driveway access be from the Municipal Road. Mr. Ford asked that the driveway be placed a distance from the County Road. Ms. McBride said UTEC would be amenable to that placement. She also said UTEC would be amenable to the Planning Board retaining jurisdiction over the location of the dwelling in the Exception Area.

Mr. Kirkpatrick said he understood the general purpose of the proposed sale was to generate funds to purchase more open space and to provide a higher level of protection than if it were bought by the County. Atty. Jost said that, by law, funds received from the sale must be used to retire the debt that was associated with the purchase of the property, to the extent to which the debt still exists. Mr. Kirkpatrick said that would, effectively, free up other resources for the acquisition of more open space. Ms. McBride agreed. She also announced that the PIG Grant had been approved by the State.

Atty. Jost said that basically concluded the Township's presentation.

Mr. Kirkpatrick opened the Hearing to the Public. He asked that anyone making a comment or providing a factual statement about the property be sworn. Pat Lingelbach, Jutland, Member of the Township Historic Preservation Committee and the Township Historical Society, had concerns about potential renovation or reconstruction of the existing house and/or farm buildings, noting that they are in the Historical District. Mr. Kirkpatrick said he thought Ms. Lingelbach was looking for a condition that would require that any modification of the tenant house or the barn be reviewed by the Historic Preservation Committee and the Township. Atty. Jost said that should be made clear to the prospective buyer.

William Happel, Corner of Route 513 and Route 579, was sworn by Atty. Anderson. Mr. Happel voiced opposition to the Variance. He has been farming in the Township for many years. Mr. Happel said the proposal would result in the property becoming a vanity farm with a mcmansion and a few horses. Mr. Happel also said the Township should look at farming as an industry where people make their living.

Louie Pingatorie, Pittstown Road, asked how the location of the dwelling could be determined, since there had been no soil logs. Mr. Roseberry said that the Exception Area has approximately thirty acres and there should be an area where soil log regulations would be met. Mr. Kirkpatrick said the Township has agreed to a condition that before anyone built a house on the property, the future property owner would have to come back to the Board and show the location. Mr. Pingatorie referenced Paragraph 30 of the Contract of Sale that stated that buyer acknowledged that seller had received other offers. The seller chose to sell the property to the Township because they intended to preserve the property as a working farm and/or parkland or open space. Mr. Pingatorie said the contract further states that buyer intended to apply for inclusion of the property in one or more farmland preservation programs of the Hunterdon County Agriculture Development Board and/or the State Agriculture Development Committee. He said the Township broke the contract because that was not done. Mr. Kirkpatrick said that was between the Township and the seller. The issue before the Board is whether to grant the Township the ability to sell the property with the right to build another dwelling.

Mr. Pingatorie mentioned construction of a 45,000 square-foot house. Mr. Kirkpatrick said the 45,000 square feet referred to Floor Area Ratio. He said that could include a barn, or a riding arena and a house. Mr. Ford said existing structures on the property have 15,000 square feet. That would leave 30,000 s.f. for new construction. Mr. Pingatorie asked why the existing house could not be torn down and replaced or improvement be made to the existing dwelling so there would only be one dwelling on the property. Mr. Kirkpatrick said testimony was provided indicating that tearing the existing house down would modify the Historic District. It was also felt that the house was not particularly marketable. Mr. Pingatorie's issues were taking two acres to build a second dwelling and the location of the second dwelling.

Tom Volckmann, 2 Perryville Road, asked Mr. Haynes if when the property was purchased in 2000, was it based on farmland preservation. Mr. Haynes said "Yes", farmland preservation and open space. Mr. Volckmann asked Atty. Jost if the placement of an additional dwelling would not be contradictory to the contract. Mr. Jost said that was the reason the Township was before the Board. However, the Douglass family had agreed to a second dwelling. Mr. Volckmann asked Mr. Roseberry how the proposal coincides with the Master Plan. Mr. Roseberry believes that building a dwelling on the property and retaining the tenant house as an accessory use would satisfy the goals of the MP.

Mr. Volckmann asked Mr. Steffey about his statement that a second dwelling occurs frequently with a preserved property and that it could be used for additional members of the family. Mr. Steffey said that could be used for estate planning purposes. .

Mr. Volckmann had a question for Mr. Steeves about the tenant house having a negative impact on the residential use. Mr. Steeves said it would have a negative impact if it was owned by a third party. If it was subdivided with 8.3 acres (required in the AP District) agricultural soils would be lost. Mr. Steeves thought Mr. Happel would agree that farmers do not want non-farm neighbors looking at their farm. Mr. Kirkpatrick said the Contract gives the future owner the right to subdivide the parcel with the tenant house. He felt the proposal gives the Township more control by keeping the property as a unit. Mr. Volckmann said not one of the experts presented testimony that the proposal would have a positive impact for farmland preservation. He said residents were not given an opportunity to know where the dwelling would be placed. Mr. Volckmann said that was very poor planning.

Ms. McBride addressed planning and the Exception Area. She said members of the Stewardship Committee walked the subject property many times to determine the best site for the house. Ms. McBride said that a house would not be that visible from anywhere within the Exception Area. Mr. Kirkpatrick noted there is a hedgerow along the former Lot 12, which would tend to conceal a dwelling.

Alan LaCosta, 4 Perryville Road, presented a petition signed by twenty-three objectors who oppose building a second house on the property. It was marked O-1. Mr. Kirkpatrick said it was envisioned in the Contract that a second house would be built. Mr. LaCosta said the contract was null and void, since the house could only be built if the property was included in a HCAD Program. Mr. Kirkpatrick said there is an element in the Contract that applies tonight. That element is whether the Township has the right within that Contract to ask to build another house. Mr. Kirkpatrick continued. He said whether the Township has met their obligations is a matter between the seller and the buyer. Mr. Kirkpatrick said the Township could have applied for a subdivision of the tenant house, buildings and 8.3 acres. The remaining 92 +/- acres could be sold and the buyer could build a house anywhere on that acreage.

Mr. Taibi asked Atty. Jost to enlighten the Board on options, as far as satisfying concerns of residents. Mr. Taibi said there is going to be another house on the property. Atty. Anderson said Atty. Jost should be sworn since he was providing testimony. Atty. Jost was sworn by Atty. Anderson. Atty. Jost said he serves as Union Township Municipal Attorney and was a participant in the Contract negotiations with the Douglas Family. Atty. Jost said the Douglass family sold the property to the Township because the Township agreed not to develop the property. Mr. Jost said the probable need to build another house was discussed with the Douglass Family and they understood.

Mr. Kirkpatrick said the property could be subdivided into two 50-acre lots, the tenant house could be torn down and the original site would probably have two large houses. Mr. Ford asked Atty. Jost to address the neighbors' concern about the Contract being void because the Township had not joined the County Agricultural Program. Atty. Jost said the Contract would have been violated if the Township had applied to the Board to use the property for anything other than farming or open space. Mr. Kirkpatrick reemphasized the validity of the Contract is a matter between the Township and the buyer. Mr. Kirkpatrick asked Atty. Jost to look at Exhibit O-1. Atty. Jost said he did not know the Board's policy on the admissibility of petitions. Mr. Kirkpatrick said the Board had accepted the petition as O-1. Atty. Anderson said the Board does not have to take particular note of O-1. It is available to them. Mr. Anderson suggested to the Chairman that it should be available to Atty. Jost for him to provide whatever response he feels appropriate. Atty. Jost indicated he believes the Township has been true to the Contract and the purpose of this application is to memorialize for all time that the property will be permanently preserved. He said if the neighbors are unhappy, they could approach the Township Committee about the sale of the property, with the proposed housing opportunity. That would be a policy decision of the Township Committee.

Atty. Jost said it was the consensus of those who were consulted that it would not be a good idea to subdivide the tenant house. Mr. Kirkpatrick said two conditions of approval could be that there would be no further subdivision of the land and perhaps a building envelope of 1.5 acres, which is consistent with the District. Atty. Jost thought that was doable, subject to agreement with UTEC, the Stewardship Sub-Committee and the Township Committee. Mr. Taibi asked Atty. Jost to revisit the option of the objectors to approach the Township Committee. Mr. Jost said the Committee has the right to sell the property with the housing opportunity. He said the Committee could presumably decide to sell the property without that opportunity. Atty. Jost said it has been determined that it would be more marketable with the second dwelling opportunity. He reemphasized the issue is a Township Committee matter.

Gary Marsh, 6 Perryville Road, said he knew Manning and Merlin Douglass. Mr. Marsh was sworn by Atty. Anderson when it became apparent he would be giving testimony. Mr. Marsh said Manning Douglass had wanted to subdivide a portion of the northern part of the property to build a house. The reason was to preserve the rest of the property as farmland. Atty. Jost said if the Township Committee wants to sell the property with a particular site for the house that could be done. Mr. Kirkpatrick stressed that when it comes time for the house to be built, if that happens, everyone will have the opportunity to hear where the dwelling is proposed to be constructed. William Happel had a question for Atty. Jost. He wanted to know if an approval would establish a precedent that would affect his adjacent property, as far as future planning.

Mr. Kirkpatrick thought Mr. Happel's question was for the Board. Mr. Kirkpatrick said this was not the first time the Board had considered putting more than one dwelling unit on a single piece of property. The non-agricultural part of the proposal will probably be 1.5 acres. The Township is requesting two acres. Atty. Anderson said the Board would not be establishing a precedent by granting a variance. Every variance application stands on its own. Mr. Kirkpatrick said this variance application was not inconsistent with other applications. Mr. Happel had a question about vacating the Contract. Atty. Anderson said the Board has no jurisdiction over the Contract. The Board has only the jurisdiction to decide whether the request of the Township to allow another house on the property should be granted. Atty. Anderson said any challenge to the Contract would not come to the Planning Board.

A resident asked how the Board could make a decision based on a legal Contract. Atty. Anderson said the Board is not being asked to make a decision on anything that has to do with the Contract. The Board is being asked whether as a matter of land use it is reasonable to permit a second dwelling on a one-hundred acre parcel. Atty. Anderson said that if the property had not been restricted, the owner could have constructed eleven homes. Atty. Jost said that was the original concern. The issue of the Township not having placed the property in either the HCADB or the SADC was raised again. Mr. Kirkpatrick said that concern should be brought to a Township Committee meeting. Atty. Jost said the property could ultimately wind up with the HCADB or the SADC. Mr. Kirkpatrick recalled there was an issue with eligibility because of the period of time the Township had owned the property. He said if the property changed ownership there might be an opportunity for that owner to place the property in one of those programs.

Mr. Kirkpatrick closed the Public Comment Session. He asked for discussion. Mr. Kirkpatrick said he sees this as an opportunity to create a more viable farm for the future and for the residents of the Township to have comments on where a future dwelling would be placed and what they might want it to look like. Mr. Walchuk referenced Mr. Happel's concerns. He wanted to know if the Board had any control over mcmansions, fences etc. and whether the owner would have to continue farming. Mr. Kirkpatrick emphasized that a future owner would be able to build two 10,000 square foot mcmansions and twenty-foot high fences around the property without coming to the Board. If the Board decides affirmatively on this application, the future owner would be required to come before the Board with information about the proposed dwelling and its location. Atty. Anderson stated that the Board can restrict the use to farming. However, they have no right to force farming. Mr. Kirkpatrick said the land could be left fallow. Mr. Ford noted that the property owner would be taxed at a higher rate. Mr. Kirkpatrick said the Township was concerned about the amount of impervious surface coverage. He said UTEC has provided for enough coverage area that a reasonable farming operation could take place on the site while still preserving the open space character.

Mr. Kirkpatrick cited the following conditions. The final location of all future residential improvements would be subject to Planning Board review; the additional dwelling shall be occupied by the owner of the farm; the new driveway must be located due east of the building envelope; any modification of the timber frame barn and tenant house must be reviewed by the Township and Historic Preservation Committee for consistency with the historic nature of the property; no further subdivision of the property and the building envelope shall be as small as practical, not to exceed two acres.

Mr. Walchuk made a motion to approve the request of the Township Committee with the inclusion of all of the conditions discussed this evening. Atty. Anderson recited the conditions, as follows: No future subdivision of the property; the home Exception Area would be the minimum practical but not to exceed two acres; the Planning Board would retain jurisdiction over the location of all future residential improvements, with the approval of the applicant, that stipulation should be set forth in the deed; the new driveway would be required to be due east/northeast of the location of the new home and the Exception Area; future modifications of the timber barn and the tenant house would be subject to approval of the Township Historic Preservation Committee for historical integrity, and the Township. Atty. Jost noted those conditions would be in addition to the covenants and restrictions that have been placed in the deed with regard to the preservation of the property. Atty. Anderson said he did think the Board had the authority to impose those conditions. Mr. Ryland seconded the motion.

Vote: Ayes: Mr. Walchuk, Mr. Ryland, Mr. Taibi, Mr. Nace, Mr. Ford, Mr. Kirkpatrick

Atty. Jost thanked the Board for their consideration.

Pilot Travel Centers LLC: Block 11, Lot 24.03, 68 Route 173 West: Atty. Carlson gave a status report of construction at the site. He said that construction is almost complete. Pilot is preparing a draft of an off-site improvement plan to be sent to the Township Engineer. The bond that was part of the approval has been forwarded to the Township. Mr. Carlson said Alan Steere was available for questions pertaining to construction and Jim Woods could address engineering concerns. Mr. Kirkpatrick understood that Pilot would be seeking a TCO in order to move the operations in the trailer into the building. It is Pilot's intent to fully operate the store under the TCO. Mr. Kirkpatrick asked the Board for questions or concerns. Mr. Ryland had a question about the letter from Pilot dated July 21, 2009. Engineer Smith said he understood that letter was to facilitate his office in evaluating if Pilot had met required conditions. Mr. Smith said he would be reporting back to the Board. Mr. Ryland said he was concerned about the No Left Turn Sign as it related to Item 2.h of the letter. He was told the sign would be taken down if a problem arose.

Memorialization of Resolutions: Union Station Associates LLC: Block 22, Lot 19, County Route 513: Atty. James Knox, representing applicant, said the Resolution was well done. There were no complaints with the Resolution. Mr. Kirkpatrick asked for comments or questions from the Board or its Professionals. There were none.

Mr. Ford made a motion to approve the Resolution. Mr. Bischoff seconded the motion.
Vote: Ayes: Mr. Ford, Mr. Bischoff, Mr. Nace, Mr. Kirkpatrick

Pilot Travel Centers LLC: Block 11, Lot 24.03, 68 Route 173 West: Atty. Carlson had minor corrections. He asked that Item 7 on Page 2 pertaining to Witnesses testimony be changed to say that Brett Skapinetz testified that applicant's conceptual off-site traffic improvement plan would be sent to NJDOT. Mr. Kirkpatrick said there was nothing on paper. Atty. Carlson asked that Item 1k.1 on Page 3 be altered to state that applicant would widen a portion of Highway 173 up to four feet, including the taper. Mr. Ford noted the word for should be inserted instead of from on Page 3, 1h. Atty. Anderson said he had captured the corrections. He will provide a corrected copy for the Board Chairman's signature, if the Board approves.

Mr. Nace made a motion to accept the Resolution. Mr. Ryland seconded the motion.
Vote: Ayes: Mr. Nace, Mr. Ryland, Mr. Walchuk, Mr. Taibi, Mr. Ford

Fallone: Block 22, Lot 34, Perryville Road: Extension of Final Subdivision/Site Plan: Mr. Kirkpatrick announced a change in the agenda. He said the Board would hear Fallon's request prior to the Belickjian Hearing. Atty. Lloyd Tubman was present on behalf of applicant. Ms. Tubman said Fallon had received approval for a planned adult residential community in November 2007. She gave a brief overview of the proposal. Applicant is seeking a four-year extension. Atty. Tubman said the MLUL allows a Board to grant extensions of greater than one year for a planned community of greater than fifty acres. Mr. Kirkpatrick said it would be highly unlikely the Board would grant an extension for more than one year. Atty. Tubman said the complexity of the project and the economy warrants more than a one-year extension. Atty. Anderson said he had discussed the issue with Atty. Tubman. Atty. Anderson said he believes the MLUL gives the Board discretion to extend the approval for more than one year; however, there is nothing to compel the Board to grant approvals of more than one year. Mr. Kirkpatrick asked Atty. Tubman if there had been an attempt to build anything other than age-restricted units on the property. Ms. Tubman said she is aware of the proposed statutory change. She said there has been no such discussion nor was it the intent to make changes in the approval. Atty. Tubman said applicant would have to return to the Board for approval if there was change. She said a one-year extension is impractical considering the fact that the sewer plant must be constructed before the first house is built. Mr. Kirkpatrick did not consider that to be a big inconvenience. He asked for Board members input. Mr. Bischoff asked for confirmation that the sewer plant had to be constructed prior to the first unit being built, or occupied. Atty. Tubman said it would be required prior to occupancy. Atty. Anderson did not feel that a two-year extension was out of line, given the economic situation. Mr. Taibi thought the Board should continue their policy of granting one-year extensions. Mr. Bischoff offered that the Board would not be setting a precedent. Mr. Kirkpatrick asked for a motion to grant a two-year extension.

Mr. Bischoff made a motion to grant a two-year extension. Mr. Walchuk seconded the motion.

Vote: Ayes: Mr. Walchuk, Mr. Ryland

Nayes: Mr. Bischoff, Mr. Taibi, Mr. Nace, Mr. Ford, Mr. Kirkpatrick

Mr. Bischoff made a motion to grant a one-year extension. Mr. Ford seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Ford, Mr. Walchuk, Mr. Taibi, Mr. Ryland, Mr. Nace
Mr. Kirkpatrick

Belickjian: Block 29.02, Lot 1, 2 Stires Way: Public Hearing: Atty. Lloyd Tubman was present on behalf of Jennifer and Robert Belickjian. Ms. Tubman said the Belickjians are seeking a use variance for a second residence on a thirty-eight acre property. The property is one of three farmettes that was part of the Brass Castle Subdivision. Atty. Tubman said the second house is consistent with but does not match the Echo Housing Ordinance, which allows for a 750-foot unit. Applicants are seeking to build a 1,656 square-foot modular unit on a concrete slab. There would be no further subdivision of the property. In addition, there would be a deed restriction stating that the unit would have to be removed if and when it is no longer occupied by a parent of the occupant of the primary residence on the property. Mr. and Mrs. William Smith, who are Jennifer Belickjian's parents, would be the occupants.

Atty. Anderson swore Jennifer and Robert Belickjian and William Smith. Atty. Tubman said Mr. Smith would give an overview of the proposal. Ms. Tubman asked that an Aerial Photograph showing the property and surroundings be marked Exhibit A-1. Mr. Kirkpatrick noted that a planner was not present. Atty. Tubman felt that applicant was sufficiently close to the Echo Housing Ordinance. Ms. Tubman said she would rely on the Board's knowledge and the testimony of the property owner. Mr. Kirkpatrick asked Atty. Tubman to guide Mr. Smith on positive and negative criteria. Mr. Smith displayed an Exhibit which was marked A-2, dated July 23, 2009. Mr. Smith apprised the Board of the location of the proposed unit, which is behind an existing garage. The occupants of the second dwelling will use that garage. Mr. Smith said the Belickjians have a three-car garage for their use. Mr. Smith had taken seven photos of the site. The first shows the original buffer zone that was installed with the original home in 1999. The photo was taken from Stires Way. The second photo was also taken from Stires Way. It shows the cut in the road. He said it shows an approximate six-foot elevation. The third photo shows the garage and a barn. Mr. Smith said he had additional photos of the area. The next photo, marked Exhibit A-4, was taken about seventy-feet east of the driveway. Another photo, about one-hundred and fifty feet west of Stires Way which shows the proposed modular home behind the white pines was marked Exhibit A-5. Atty. Anderson noted that A-3 had been skipped. A photo taken about eighty feet east of the barn was marked Exhibit A-6. Mr. Smith showed a photo about sixty feet from the back area of the garage. It was marked Exhibit A-7.

Mr. Ford asked the height of the proposed building compared to the height of the garage. Mr. Smith said it would be about seventeen feet, six inches. There is twelve inches of sub grade from the base of the modular home to the grade, twelve inches for the floor joists and eight feet for the room height. The building width is forty-one feet. The ridge point will be seven feet. Mr. Smith said the garage is approximately twenty-two feet high. The trees average between twelve and sixteen feet high. The existing pines will obscure all but the roof of the proposed dwelling. Mr. Smith said the shingles on the home would match those on the garage. Atty. Tubman asked Mr. Smith why he chose a home of the proposed size. Mr. Smith indicated a home of the size proposed would be more comfortable than the size allowed by the Echo Ordinance. Mr. Kirkpatrick concurred with Mr. Smith.

Mr. Smith showed a picture of a home similar to the one being proposed. Atty. Tubman marked the Exhibit A-8. Mr. Smith had been asked why the home would be on a slab. He felt that the slab would be preferable. Mr. Smith also explained proposed landscaping. He believes in dwarf landscaping. Mr. Smith displayed a Plan prepared by Glassman Landscaping Design, Annandale, NJ. It was marked Exhibit A-9. Mr. Smith provided a layout of the unit, which will have two bedrooms. Atty. Tubman said it would not be marked as an exhibit since it had been included with the packet. Mr. Smith addressed the septic system issue. He said the Hunterdon County Board of Health had granted approval on June 6, 2009. Mr. Kirkpatrick asked the proposed color for the dwelling in relationship to the barn. Mr. Smith said he would like it to be the same color as the primary dwelling and eventually convert the garage to the same tan color. Mr. Ford asked the distance between the house and the garage. Mr. Smith said there would be ten feet between the house and the rear of the garage, allowing for some landscaping.

Atty. Tubman asked Mr. Smith if the intent was to remove the dwelling and the slab foundation when they cease to occupy the unit. Mr. Smith replied in the affirmative. Atty. Tubman said if the property changed ownership, the new owners could have parents move into the dwelling. Mr. Smith said the existing well will supply water to the dwelling. The existing septic system will also serve the needs of the proposed dwelling. Mr. Smith said JCP&L will be installing a separate service to the garage and that will supply electricity to the modular unit. Atty. Tubman said the intent for variance purposes is to make this a temporary structure. Mr. Kirkpatrick said for practical purposes it is an Echo Unit that is larger than seven-hundred and fifty square feet. Ms. Tubman said it is a livable Echo Unit.

Atty. Tubman asked for questions of Mr. Smith. Mr. Walchuk asked Mr. Smith to comment on the differences between a slab foundation and piers in terms of demolition. Mr. Smith indicated it would be more difficult to demolish a slab. It would be the property owners' responsibility to remove the slab. Engineer Smith asked about the use of the garage. Mr. William Smith said his wife would be using it for her car. He is looking forward to doing some farming and being active in the church and community.

Mr. Kirkpatrick asked for comments from the Public. Atty. Anderson swore Robert Podera, 3 Stires Way. Mr. Podera said the Belickjians have been good neighbors. Mr. Podera said applicant should show special needs to meet the positive criteria, as required for a D Variance. He also said applicant needs to show that there has been no detriment to the Zone. Mr. Podera does not believe they have met that criteria. The property is in an agricultural District. Mr. Podera said the Planner for the previous application (Township of Union, Block 29, Lot 13) indicated there is a heavy weight in terms of preserved farmland. Mr. Kirkpatrick said Mr. Smith had stated the proposed dwelling would be constructed within the two-acre building envelope. Mr. Podera said that was true, however they are going beyond the Echo Ordinance square footage. He said the proposed dwelling does not conform to other homes in the area. Mr. Podera said the home would be visible since the existing trees will not obscure it. He voiced a concern about additional water usage and the fact that applicant had asked for a waiver from providing an aquifer test. Mr. Podera said he believes that in the future, a hardship application will come before the Board and the dwelling will become a rental unit. Mr. Podera emphasized that he did not feel applicant had met positive and negative criteria.

Mr. Kirkpatrick asked Mr. Podera why he thought the proposed unit would draw more water than the seven-hundred and fifty square foot unit. Mr. Podera said he felt it was de minimus from a practical standpoint; however, it was unknown, since there would be two bedrooms. Mr. Kirkpatrick wanted to know what the negative impact would be from seeing a house that looks similar to the existing barn and which is partially screened by vegetation and next to another house. Mr. Kirkpatrick asked Mr. Podera to quantify the negative impact. Mr. Podera said a home that looks like a trailer could affect the overall value of the Brass Castle development. Mr. Taibi asked Mr. Podera if he would prefer a 1,700 square foot house or a 750 square foot house. Mr. Podera said if the home complied with the Ordinance, he would not have the ability to object. He said his preference was that there be no home. Mr. Podera said the size of the development was being increased. Atty. Tubman said her client was not part of the referenced development. Mr. Taibi said he found it distasteful that Mr. Podera objected to the request only because of the size of the proposed home. Mr. Podera said the Board needs to look at the impact on the Zone. Mr. Podera said the unit could be at a different location than that which is proposed. Mr. Kirkpatrick said that would be out of the two-acre building envelope. Mr. Podera asked that additional landscaping be provided on Stires Way, if the Board grants approval.

Earl Steeves, 14 Wolf's Farm Road, voiced his support of the application. He feels the spirit of the Echo Ordinance is embodied in the request. Mr. Steeves remained under oath from a previous application.

Robin Brand, 3 Groom Road, voiced a concern about granting the Variance. She felt it would create future problems and set a precedent. She referenced resistance by residents at the Township of Union/Douglass Hearing. Mrs. Brand believes that residents have an underlying mistrust that rules will change in the future.

Paige DiRoberto, 5 Cooks Cross Road, voiced a concern about monitoring of a future sale of the subject property. Atty. Tubman said there would be a deed restriction stating that either the unit would have to be removed, or could be marketed and deed restricted that only a parent or parents of the owner of the primary house could utilize the second dwelling. Ms. Tubman also said there was a discussion that the Zoning Official would confirm, on an annual basis, that the second unit was being occupied by a parent or parents.

Scott Eichlin, Bailey Farm Road, said that DCA requires a three-foot footing for any structure over one-hundred square feet. An eighteen-inch crawl space would also be required. Mr. Smith said the crawl space will be twenty-four inches.

Robert Podera had a question for applicant's Attorney. Mr. Podera said he mentioned an alternative location next to the barn. He was told that would be outside the building envelope. Mr. Smith said that would require more impervious surface coverage. It would also interfere with the septic system. Mr. Smith said the proposal places the unit at the ultimate location. He also said the location is best for storm water runoff. Applicant is disturbing less than an acre of land, therefore, storm water rules do not apply.

Michele McBride, Old Forge Lane, asked if there was a mechanism in place to confirm that occupants of Echo units are those for whom the use was approved. Engineer Smith said the Echo Ordinance states that owner/occupant of the primary dwelling shall obtain an annual permit from the Zoning Official. Atty. Tubman emphasized that this application is a Use Variance solely because its size exceeds that permitted in the Echo Ordinance. Engineer Smith said applicant sought relief from the prohibition of two principal uses on a property.

Pat Lingelbach asked if there were other Echo units in the Township and if there were, have they been dismantled. Mr. Kirkpatrick said he did not know. Mr. Taibi said he knew of one. He did not have knowledge of the dismantling process. Mr. Kirkpatrick cited a case in Vermont where a twenty-eight hundred square foot house was dismantled in three days and set up in another location in two days.

Karen Boates, 69 Cooks Cross Road, had a question about who would occupy the proposed dwelling. She said the Notice stated parents/occupants. Atty. Tubman said the intent is that the occupants would be parents of the owners of the primary dwelling and those restrictions would be recorded in the Deed. Ms. Tubman said she would need the Belickjians to consent to Easements. Atty. Tubman asked Mr. and Mrs. Belickjian if they were willing to restrict the property as it should have been many years ago to preclude further subdivision. Mr. Belickjian said "I do". Ms. Tubman also asked if applicant was willing to deed restrict the property so that only a parent or parents of the primary dwelling resident/occupant be allowed to live in the second unit. The response was "Yes". Atty. Tubman continued. She asked applicants if they were willing to have a deed restriction requiring removal of the unit if it ceased to be used for that purpose.

The response was in the affirmative. The slab would also be removed. The Belickjians had no issues with obtainment of an Annual Zoning Permit. Mr. Ryland had a question about wording of owner/occupant. Could the occupant be the owner? Atty. Tubman said the owner would be the occupant of the primary dwelling. Mr. Ford asked if applicant would be willing to plant more trees. Applicant replied in the affirmative. Mr. Hintz will review the submission pertaining to trees.. Mr. Podera stated earlier that the existing trees would not obscure the unit. Mr. Kirkpatrick asked Mr. Hintz if he felt the application met the criteria for positive and negative criteria. Mr. Hintz believes that it meets the positive criteria and it would not have a negative impact on the Zone.

St. Catherine of Siena: Block 22, Lot 34.02, Perryville Road: The Public Hearing will be continued at the Board's August 13, 2009 meeting. Mr. Kirkpatrick told Atty. Salvatore DeFazio that notice and adjournment procedures would be coordinated by Atty. Anderson.

Belickjian: Public Hearing, cont'd. Mr. Walchuk had a question for Engineer Smith. Mr. Walchuk asked if the Echo Ordinance might have been designed for a structure that could have been removed in an easier manner. Mr. Smith said he thought the Ordinance was meant to minimize cost. He said this applicant is willing to spend more money in order to have a nicer situation. Mr. Walchuk voiced a concern about the mechanism to assure dismantling of the structure when it has served its purpose. Enforcement would be under the purview of the Township Zoning Official. Mr. Walchuk asked about the Echo Unit size. Mr. Kirkpatrick said that perhaps the Echo Ordinance should be revisited.

Mr. Kirkpatrick said if there was no more discussion he would like a motion. Mr. Taibi made a motion to approve the application, with the restrictions enumerated. Atty. Anderson recited the restrictions. The property will be restricted against further subdivision; the unit would be used only by the parent or parents of the owner/occupant of the primary residence; and the unit, including the foundation, would be removed when it is no longer used for the permitted use; registration of the unit will be provided annually to the Zoning Official; trees will be added to the satisfaction of the Township Planner and applicant will comply with all conditions of the Echo Ordinance. Mr. Ford seconded the motion.

Vote: Ayes: Mr. Taibi, Mr. Ford, Mr. Ryland, Mr. Nace, Mr. Kirkpatrick

Nays: Mr. Walchuk

Atty. Anderson noted that five affirmative votes are required for a use variance and five members voted in the affirmative.

Motion to Adjourn: Mr. Taibi made a motion to adjourn. Mr. Ryland seconded the motion. (11:15 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary